CITY OF RYE

1051 BOSTON POST ROAD RYE, NY 10580-2996
TEL: (914) 967-5400 FAX: (914) 967-4604

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VIA FACSIMILE and FIRST CLASS MAIL

Scott E. Sheeley, Permit Administrator
NYSDEC Region 3 Headquarters
21 South Putts Corner Road
New Paltz, New York 12561

Wayne Mizerak, Project Manager
NYSDEC
Department of Environmental Remediation
625 Broadway
Albany, New York 12233-1080

Jeffrey Sama, Director
NYSDEC
Environmental Permits
625 Broadway
Albany, New York 12233-1080

Re: Beaver Swamp Brook Freshwater Wetlands/CWA Section 401 Water Quality Certification Application
App. ID 3-5528-00104/00001

Dear Messrs. Sheeley, Mizerak and Sama:

The pending application by the Town/Village of Harrison ("Harrison") for an Article 24 Freshwater Wetlands/CWA Section 401 Water Quality Certification Application (the "Permit Application") to fill at least 10,000 cubic yards[1] and grade

[1] The figure of 10,000 cy is from the Army Corps of Engineers Joint Permit Application filed by Harrison in which it states that the 10,000 cy (or approximately 2 feet over 5.7 acres) is associated with the Redevelopment Project. However, when one calculates the amount of fill required to cover 2 feet over 5.7 acres, the fill is approximately 18,000 cy.

approximately .39 acres of State designated Class II[2] Wetland J-3 ("Wetland J-3") and 1.7 acres of the adjacent area must be denied.

This letter, along with the attached environmental analysis by Laura Tessier[3] of Tessier Environmental Consulting (the "Tessier Report"), illuminates the deficiencies in the State Environmental Quality Review Act ("SEQRA") process as well as the irrefutable environmental impacts that the remediation project has already had and the future harm that will be had if the Permit Application is granted.[4]

The City of Rye ("Rye") urges the Department of Environmental Conservation ("DEC") to deny this Permit Application and to require corrective action be taken to rectify the stormwater flooding and wetland impacts that have resulted from post Record of Decision ("ROD") modifications to the Beaver Swamp Brook Remediation Plan.

As the accompanying Tessier Report details, the Town/Village of Harrison ("Harrison") made significant changes to the Remediation Project in a largely non-public and piecemeal design process after the adoption of the ROD. Many of the key documents in question were withheld from Rye during this closed modification process despite Rye's specific request back in June 2002 to be included in the process going forward at the time the ROD was approved. From examination of DEC records, it is unclear whether full documentation of some of these modifications was provided to DEC as well.

Since the completion of the Remediation Project, Rye and Harrison residents have regularly reported increased flooding from the Beaver Swamp Brook. Through evaluation of newly obtained documents, including partial fulfillment of Rye's FOIL request to Harrison, it has become apparent that the post-ROD modifications have significantly changed the wetland and stormwater functioning of Wetland J-3.

Given the wetland, stormwater and flooding experience since completion of the Remediation Project, approval of the proposed Redevelopment Project cannot responsibly be considered. Instead, the corrective actions and reviews outlined in this letter should be undertaken as quickly as possible.

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[2] 6 N.Y.C.R.R. Part 663.5(e) defines a Class II Wetland as providing "important wetland benefits, the loss of which is only acceptable in very limited circumstances. A permit shall be issued only if it is determined that the proposed activity satisfies a pressing economic or social need that clearly outweighs the loss or detriment to the benefit(s) of the Class II Wetland."

[3] Laura Tessier received a M.S. in Ecology and Resource Management from Yale University and is a certified Wetland Scientist with the Society of Wetland Scientists.

[4] For purposes of this letter, any reference to the Remediation Project refers to the work performed to remove and/or contain the hazardous material at the site. Any reference to the Permit Application or the Redevelopment Project refers to the activities currently proposed as part of the Permit Application. Collectively, the Remediation Project and the proposed Redevelopment Project are referred to as the Beaver Swamp Restoration Project.

The Commissioner of the DEC is Required to Analyze the Permit Application in Accordance with the Standards for Issuance under the Uniform Procedures Act

The DEC Commissioner (the "Commissioner") must analyze freshwater wetland permit applications to determine if they meet the "Standards for Issuance" found in the Uniform Procedures Act ("UPA") regulations at 6 N.Y.C.R.R. Part 663.5 before a permit may be issued. See 6 N.Y.C.R.R. Part. 663.5.

Under Part 663.4 Regulatory Procedures – Activities Chart, the section pertaining to "Draining, filling, grading, clear-cutting, and dredging" lists filling wetlands as an "X" and filling in the adjacent areas as an "N".[5] Similarly, the Activities Chart lists grading activities as an "X" in the wetland and lists grading activities in the adjacent areas as an "N". Draining and altering water levels are listed as an "X" regardless of the activity taking place in the wetland itself or within the adjacent areas.

For activities listed as a "N", the Commissioner must weigh the need of the permit against the benefit lost by considering the following three compatibility standards: (i) would the permit be compatible with preservation, protection and conservation of the wetland and its benefits, and (ii) would the permit result in no more than insubstantial degradation to, or loss of, any part of the wetland, and (iii) would the permit be compatible with the public health and welfare (the "Compatibility Test"). [Emphasis added].

If an activity is listed as a "X", or if the "N" activities cannot meet the Compatibility Test, the Commissioner must consider the following weighing standards for a Class II wetland: 1) The proposed activity must be compatible with the public health and welfare, be the only practicable alternative that could accomplish the applicant's objectives and have no practicable alternative on a site that is not a freshwater wetland or adjacent area and 2) the proposed activity must minimize degradation to, or loss of, any part of the wetland or its adjacent area and must minimize any adverse impacts on the functions and benefits that the wetland provides (the "Weighing Test")

The Permit Application Fails to Meet the Standards for Issuance under the Uniform Procedures Act

A. Failure to Meet the "Weighing Test" Standards

According to the Permit Application, Harrison will be filling and grading in Wetland J-3. These activities are explicitly prohibited from occurring unless Harrison can meet the criteria outlined above in the Weighing Test. By filling in and grading Wetland J-3, Harrison will only cause more flooding impact to the already flood prone area of the Beaver Swamp Brook and permanently degrade Wetland J-3. By removing

[5] An "X" means that the activity is incompatible with a wetland and its functions and benefits. An "N" means that the activity is usually incompatible with the functions and benefits of a wetland, but in some cases the proposed action may be insignificant enough to be compatible.

the natural capabilities of Wetland J-3 to control flooding and stormwater runoff, the public health and welfare of both Rye and Harrison will diminish.

Moreover, the proposed Redevelopment Project – Project Home Run - is certainly not the "only practicable alternative" for providing more recreational opportunities for the public. As explained more fully below, Harrison currently has the ability to use the Beaver Swamp site for more passive recreational uses as originally intended in 2002. Harrison has failed to show that there are no other practicable alternative locations that could be home to athletic fields that are not home to freshwater wetlands or adjacent areas. In fact, the initial Proposed Remedial Action Plan (the "2002 PRAP") called for developing the property as a "wildlife/nature preserve with low maintenance trails that would provide public access to the variety of vistas hidden on the site." Harrison has not met its burden that a less intensive and less detrimental use of the Beaver Swamp site is insufficient to meet its needs and that it has any need for the Permit Application to be granted.

The community surrounding the Beaver Swamp site has experienced enormous effects from recent storm events and regular increases in flooding during non-major storm events since completion of the remediation project. Tropical storm Ernesto last September and the more recent storms in March 2007 and this past weekend have caused severe flooding. Any more loss of natural flood/stormwater runoff controls will most likely result in an increase in the severity of flooding. Based on Rye's review of the pertinent documents relating not only to the Permit Application but also the Remediation Project reveals that post-ROD modifications and inconsistencies in the wetlands and stormwater information presented explain the changes in wetland functions and flood impacts that have been experienced.

B. Failure to Meet the "Compatibility Test" Standards

Harrison has also failed to show how the filling and grading in the adjacent area of Wetland J-3 meets any prong of the Compatibility Test. The filling and grading of 1.7 acres of the surrounding area will result in a loss of essential flood control measures while simultaneously increasing the impact of stormwater runoff. Harrison has not shown that filling and grading 1.7 acres surrounding Wetland J-3, to allow for the construction of impervious surfaces and athletic fields, preserves or enhances the benefits conferred by Wetland J-3 and the adjacent area. In fact, it appears that many of these potential adverse environmental impacts were not even reviewed as part of the SEQRA process.

For the reasons stated above, Harrison has failed to meet the standards set forth in both the Weighing Test and Compatibility Test and, therefore, the Permit Application must be denied. In particular, the lack of information regarding flooding impacts and the failure to show that building athletic fields in close proximity to Wetland J-3 is the "only practicable alternative" must result in a denial of the Permit Application.

Harrison Currently Has the Ability to Use the Beaver Swamp Brook Site for Passive Recreation and Has Failed to Demonstrate a Need to Implement "Project Home Run"

Harrison currently has the ability to make a beneficial use of the property. As part of the Permit Application, Harrison is required to demonstrate a pressing economic and social need for the project to compensate for the unavoidable impacts to the wetlands. In other words, Harrison must show that it has an urgent and intense need to have DEC grant the Wetland Application. See 6 N.Y.C.R.R. Part 663.5(f)(5)(ii). Moreover, this "need" for Project Home Run must "outweigh the loss of or detriment to the benefits in a way that is beyond serious debate, although there does not have to be a large or significant margin between the need and the loss." See 6 N.Y.C.R.R. Part 663.5(f)(5)(iii).

There is a not even a modicum of evidence put forth by Harrison showing any need for the Redevelopment Project - Project Home Run, let alone the construction of same in and adjacent to Wetland J-3. Since Harrison has not put forth any evidence of its absolute need to place Project Home Run within Wetland J-3 and its adjacent area, the Permit Application does not meet the UPA requirements and cannot be granted. Even if Harrison had demonstrated a need for Project Home Run to be implemented in and adjacent to Wetland J-3, any potential benefit is outweighed by the burdens placed on Harrison and Rye from the loss of flood protection and direct impact to Wetland J-3 and the adjacent area.

The Wetland Application is Incomplete since Harrison Failed to Properly Complete the SEQRA Review

An application cannot be deemed complete until the proper SEQRA review is performed. In the instant case, Harrison failed in its duties as the lead agency to properly conduct SEQRA review on the Redevelopment Project. Not only were major project components during the remediation work not included (e.g., construction/reconstruction work along Glen Oaks Drive and Oakland Avenue) but there have been several significant changes to the Redevelopment Project since the June 2004 Negative Declaration (the "Negative Declaration") and the Reasoned Elaboration of same (the "Negative Declaration Findings") was issued. Based upon the deficient SEQRA documentation, DEC must deny the Permit Application since SEQRA was not performed on the proposed Redevelopment Project.

The Harrison Town Board, as Lead Agency, Failed to Take the Requisite "Hard Look" at the Project Changes and the New Information Rendering any Reliance on the 2004 Negative Declaration Arbitrary and Capricious

Failure to undertake a comprehensive review of all potential environmental impacts of a proposed project is contrary to the intent of SEQRA and renders any subsequent action relying on the incomplete analysis arbitrary and capricious. In the instant case, the Harrison Town Board granted the Negative Declaration and its Negative

Declaration Findings 2 ½ years ago. Since that time the Remediation Project and Redevelopment Project have undergone many significant changes that have never been subject to the SEQRA review process.

Specifically, the Glen Oaks Drive construction and the Oakland Avenue improvements, although an integral part of the Remediation Project, were never identified as part of the "action" that was subject to Harrison's SEQRA review. According to Rye's records, these two components of the Beaver Swamp Restoration Project were never the subject of public hearings and were never vetted by the public.

There have also been significant changes to the acreages of wetlands that were "created" and "enhanced" as part of the Remediation Plan. These changes differ from what was indicated on the Nationwide Permit application to the Army Corps of Engineers as well as what was reported to the Fish and Wildlife Service.

In addition to Harrison's failure to review the impacts associated with the road construction and reconstruction and the changes to the wetland acreages, recent flooding events have called into question the adequacy of the Remediation Project. At the very least, the increase in severity of the flooding events should be reviewed and considered during the evaluation of the Permit Application.

In light of Harrison's failure to adequately and accurately address the potential adverse environmental impacts associated with the Remediation Project and the Redevelopment Project coupled with the increased flooding events, the DEC cannot reasonably rely on Harrison's Negative Declaration and Negative Declaration Findings as assurance that the granting of the Permit Application will not have any adverse environmental impacts.

Harrison Must Mitigate the Adverse Environmental Impacts that Have Resulted from the Remediation Project

Due to the significant changes made during the Remediation Project and the resultant adverse environmental impacts resulting from same, it is Harrison's obligation, as the project sponsor, to take affirmative steps to mitigate these impacts.

It is clear from the stormwater and flooding issues that are connected with the current state of the property that any additional development of the property is not rational or in the best interests of the surrounding communities. A deed restriction or other form of perpetual easement should be placed on the property to restrict the future use of the property to the use originally intended in the 2002 PRAP - a passive recreational area accessible to the public. Along the same line, any future filling in or reuse of the existing pond, intended to serve as a water retention area, should be forbidden.

As an initial step, a thorough analysis of what mitigating measures can be implemented to address the existing stormwater and flooding problems should be required.

Harrison should also study the feasibility of enhancing the existing pond area to help off-set the impacts from the Oakland Avenue and Glen Oaks Drive construction projects. Further study should also be had to determine if it is feasible to excavate any other areas to create more opportunity for flood storage.

Harrison Improperly Segmented Its Review of Project Home Run and Never Considered the Potential Adverse Environmental Impacts as Part of the Remediation Project

Pursuant to SEQRA, "all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage." N.Y. Envtl. Conserv. Law §§ 8-0103(9).

Segmentation is defined as "the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of signification." Except in special circumstances, considering only a part, or segment of an overall action, is contrary to the intent of SEQRA.

Upon reviewing DEC's files pertaining to the Wetland Application, it is unclear as to how Harrison treated the Remediation Project as compared to the Redevelopment Project. It appears that Harrison only completed one SEQRA review over 2 ½ years ago and that the review completely omitted several key elements. By omitting aspects of the Beaver Swamp Restoration Project from its SEQRA review, Harrison was able to "double dip" with respect to the wetland and stormwater mitigation measures it was proposing.

The most glaring example of illegal segmentation with respect to the Beaver Swamp Restoration Project is Harrison's hydrologic analysis which compares the stormwater volume and peak flow from the proposed redevelopment conditions with the pre-remediation site conditions. Essentially, Harrison compared the site conditions prior to any work being performed to that of the proposed redevelopment conditions.[6] By performing its analysis in this manner, Harrison was allowed to use the removal of Grant Avenue and the other impervious areas that were excavated and filled during the Remediation Project for credit during the Redevelopment Project. The end result is that the addition of the impervious parking area, ring roads, bleachers, and other impervious surfaces proposed as part of the Redevelopment Project appear to be off-set by the removal of the impervious surfaces during the Remediation Project.

[6] It is interesting to note that in analyzing the hydrologic impact, Harrison conveniently chose to consider the remediation and the redevelopment of the site as one project but failed to perform the SEQRA analysis on both the remediation and the redevelopment work as if it were a single project.

This segmented hydrologic analysis also allows Harrison to avoid having to develop a Storm Water Pollution Prevention Plan because Harrison allegedly met the water quality and quantity objectives by reducing the impervious surfaces by approximately 35% (when 25% is all that is required by the New York State Stormwater Management Design Manual) from pre-development conditions to post-development conditions.

Harrison also improperly used its Redevelopment Project to off-set impacts to the wetlands as part of the Remediation Project. Normally, an applicant is required to demonstrate that wetland fill is unavoidable and the least environmentally damaging alternative. Instead, Harrison used its Redevelopment Project to meet the State's no net loss standard. However, when one compares the Redevelopment Project with the Remediation Project, there is a net loss of wetlands associated with the current Permit Application.

Clearly Harrison is now treating the remediation and redevelopment of the site as one comprehensive project but Harrison did not treat the projects in this manner during the SEQRA review. The cumulative impacts associated with the entire project (both remediation and redevelopment) have never been assessed as one project. Based on the information to date, it is likely that a comprehensive review will result in the identification of several potentially adverse environmental impacts that will require further evaluation.

Harrison Illegally Deferred Analysis of Environmental Impacts and Mitigation Measures

For the same reasons that failure to comprehensively review an entire project is improper, deferring the necessary environmental review of potential impacts and proposed mitigation measures also violates SEQRA. When a lead agency makes a finding that there will be no adverse environmental impacts, it must have significant information at that time to show that the impact will not be significant. As the Fourth Department eloquently stated in H.O.M.E.S. v. New York State Urban Dev. Corp., an agency simply cannot "[l]ike the proverbial ostrich . . . put out of sight and mind a clear environmental problem." 69 A.D.2d 222, 418 N.Y.S.2d 827, 831-32 (4 Dep't 1979).

In Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Board, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4 Dep't 1999), the Appellate Division, Fourth Department found that the Penfield Planning Board improperly deferred resolution of how hazardous waste at the proposed development site was to be remediated. In Penfield, an environmental impact statement was prepared and stated that there were areas containing hazardous waste and that further characterization was required and some site clean up may be required. The Fourth Department found that deferring resolution of the remediation was improper "because it shields the remediation plan from public scrutiny...." Penfield at 349.

More recently, the Fourth Department annulled the Town of Watertown's SEQRA determination not to issue a positive declaration because several relevant areas of environmental concern were raised during the public comment period but the Watertown Planning Board failed to address same. See In the Matter of Pyramid Company of Watertown, et al. v. Planning Board of the Town of Watertown et al., 24 A.D.3d 1312, 807 N.Y.S.2d 243 (4 Dep't 2005). In annulling the SEQRA determination, the Fourth Department found that during the public comment period several concerns were raised with respect to wetland issues and the lack of documentation and data to support the conclusion that the project would pose no threats but found that those concerns were essentially ignored in the final environmental impact statement.

Similar to the Penfield and Watertown planning boards, the Harrison Town Board improperly deferred analysis of the stormwater impacts until some future time. In the Negative Declaration Findings, Harrison states that there are three conveyance options concerning channel improvements and three storage options involving the creation of additional floodplain storage as part of the project. However, it states that final decisions related to selection of one or more mitigation options will not be made until after further consideration of detailed project issues.

Harrison, in a conclusory fashion states in its Negative Declaration Findings that *"[U]pon implementation of one or more of these mitigation measures, it can be concluded that the project will not result in any significant adverse impact to flooding conditions in and around Beaver Swamp Brook."* [Emphasis added]. This deferment of analysis and failure to incorporate the actual proposed plan as part of the SEQRA process is exactly what several courts have found to be illegal.

Concerns relevant to the potential flooding and stormwater runoff impacts as well as the impacts to Wetland J-3 were raised by Rye throughout this Beaver Swamp Remediation Project. See comment letters dated June 25, 2002 from Mayor Steven Otis and City Manager Julia Novak. Despite Rye's specific request to be treated as an "Interested Party" under SEQRA during any additional review, both the Remediation Project and Redevelopment Project continued to evolve without Rye being informed of same. In the beginning of the Remediation Project, Rye received information about the proposed work on an intermittent and incomplete basis. In addition, Harrison withheld information about the Oakland Avenue and Glen Oaks Drive road and drainage construction work until after those projects were completed. Unfortunately, many of the concerns raised in the June 25, 2002 comment letters still remain today and have not been addressed by Harrison. Any reliance by the DEC on Harrison's incomplete SEQRA analysis as support for issuing the Wetlands Permit is plainly not supported by the record.

Conclusion

DEC must deny the Wetland Application because Harrison has unmistakably failed to meet the criteria set forth under the UPA. Furthermore, not only is the Wetland Application incomplete, Harrison has failed to demonstrate any need for the Redevelopment Project – Project Home Run to be constructed within Wetland J-3 and its

adjacent area in light of Harrison's current use of the property. In addition to denying the Permit Application, DEC should require Harrison to immediately address the significant adverse environmental impacts that have occurred since the Remediation Project.

Please contact me if you have any questions.

Sincerely,

Kevin J. Plunkett
City of Rye
Corporation Counsel

cc: Mr. Marc Moran, NYDEC Region 3 Regional Director
NYDEC, Division of Fish and Wildlife
United States Army Corps of Engineers, New York District
Westchester County Department of Planning
Mayor Otis and City Council, City of Rye

INTRODUCTION

City of Rye, New York
ENVIRONMENTAL IMPACT ANALYSIS for PROJECT HOME RUN

This report has been prepared for the City of Rye, New York ("the City") to evaluate the Beaver Swamp Brook Remediation and Restoration projects ("the Beaver Swamp Brook Projects") for potential impact on the City of Rye, with a particular focus on the pending Article 24 Freshwater Wetlands/Section 401 Clean Water Act Water Quality Certification (the "Wetlands Permit"). The information in this report is based on information in City files related to the initial planning process for the Beaver Swamp Brook Projects, as well as information from the New York State Department of Environmental Conservation ("DEC") and information requested and partially obtained from the Town/Village of Harrison ("Harrison").

On March 8, 2007, on receipt of notice that Harrison had filed a completed application for a NYSDEC Freshwater Wetland Permit for its proposed Redevelopment of the Beaver Swamp Brook Remediation Site (No. B-00109-3), the City filed a Freedom of Information (FOI) request with Harrison for documents and materials related to that permit application. On March 20, 2007, City staff and officials met with Harrison to discuss the Beaver Swamp Brook projects status. On March 27, 2007, an additional document review was undertaken by City and Harrison staff and an additional request for documents was hand-delivered to the Town Commissioner of Public Works. The City has been able to obtain copies of selected documents but the City has received no formal response from Harrison to the FOI requests.

Since the completion of the Remediation Project in, Rye and Harrison residents have regularly reported increased flooding along this section of the Brook. This circumstance has prompted the City to question not only the current Wetland Permit application, but the sequence of events that led to post-Record of Decision ("ROD") modifications that have altered site characteristics, impacted the State wetland (J-3), and increased stormwater contributions to the Brook both from and through this site.

This report examines the document records for the Beaver Swamp Brook Projects and calls into question the adequacy of public notice and environmental review; the validity of the State Environmental Quality Review Act ("SEQRA") findings; and, specifically, unmitigated wetland and stormwater impacts associated with the work done to date. These findings simultaneously call into question whether DEC can reasonably approve Harrison's request for the Wetland Permit.

1.0 BACKGROUND

1.1 Summary

The proposed reuse of the Beaver Swamp Brook site changed considerably from the 2002 PRAP to the 2003 ROD but was not identified in the 2003 PRAP for public notice or comment. In the May 2002 PRAP, future site use was defined as follows:

> "Once the Beaver Swamp Brook Site is remediated, the Town/Village of Harrison proposes to develop the property as a wildlife/nature preserve with low maintenance trails that would provide public access to the variety of vistas hidden on the site. In addition, a Local nature center will use the site in their educational programs..." (Section6) and later,
>
> "Use of the site would be restricted to recreational activities. The proposed future use for the Beaver Swamp Brook site would be for a nature park and educational center." (Section 6)

The public comments were directed at both the remediation and proposed reuse as stated in the PRAP.

In February 2003, the revised PRAP was issued and contained a single sentence regarding proposed reuse of the site:

> "The proposed future use for the Beaver Swamp Brook Site is recreational." (Section 6)

There was nothing in the document to notify the public that the proposed reuse of the site had changed dramatically. In contrast, the 2003 ROD, on which no opportunity for public comment was provided, presented the future site use as follows:

> "The proposed future use for the Beaver Swamp Brook Site is for a state-of-the-art recreational facility including Little League and soccer fields, and nature trail." (Section 6)

It appears that between 2002 and 2003, Harrison decided to use the site for intensive active recreation. However, there could have been no guarantee, and certainly there were no data to show that the remediated site could support that use at the level of intensity proposed.

The remediation plan itself continued to evolve after the issuance of the ROD, through a lengthy and largely non-public design process in which additional sampling was performed (according to the 100% DBR, delineation of the extent of contaminated soils onsite was completed in July 2004 following additional sampling), design changes were made, Glen Oaks Drive was constructed, and in the case of Oakland Avenue, a major drainage improvement affecting the site and environs was added.

The redevelopment plan also changed over the course of the remediation. From a regulatory standpoint, specifically with regard to wetlands and stormwater management, it is unclear where the remediation project ends and the redevelopment project begins. In most documents developed by the Town and its consultants, and in some State transmittals, the two are discussed as a single project. However, neither the SEQR nor permit documentation of record considers the projects as a "whole action." With the exception of a statement of recreational intent, the two projects were neither presented to the public as a single phased project during the PRAP process, nor reviewed as such for SEQRA purposes. This has resulted in a significant understatement of environmental impact, a failure to address incremental and cumulative impacts, and the lack of adequate mitigation.

The Beaver Swamp Brook is a significant ecological resource important to both the City and Harrison. In addition to serving as the municipal border between the communities, the brook enhances the character and quality of the residential and public uses along its length. At the same time, as this 4.7-square mile watershed has developed over the years, wetlands have been filled and the brook has become increasingly impacted by silt and sediment. As a result, flooding has become a primary concern for many Rye and Harrison residents.

Rye and Harrison have been working together to protect and manage Beaver Swamp Brook since the mid-1980's when, in partnership with the Town/Village of Mamaroneck and Westchester County, an intermunicipal advisory group was formed to develop the first computerized stormwater model for the watershed. This model was used to inform land use and planning decisions within the communities, and several brook restoration and study

projects were undertaken as a result. Throughout the 1990's, both communities participated in the Westchester County Long Island Sound Nonpoint Source Planning initiative driven by the Long Island Sound Study. The Comprehensive Conservation and Management Plan that grew out of that effort highlighted the importance of tributary streams and wetlands in protecting the health of the Sound.

In 1998, the federal government awarded the City of Rye one of the first Project Impact grants in New York State to update and expand floodplain management and modeling of both the Blind Brook and Beaver Swamp brooks. Recognizing their shared stream border, the City invited the Town/Village of Harrison to participate in that effort. In 2000, through the efforts of Congresswoman Nita Lowey, four additional grants of $250,000 each were secured to conduct the technical studies necessary to address issues of flooding, wetland restoration, and creation of an intermunicipal nature area in the vicinity of the current project site.

In 1996, New York State enacted the Clean Water/Clean Air Bond Act which reimburses municipalities up to 75% of eligible costs for the investigation and cleanup of abandoned, idled or under-used properties where redevelopment is complicated by real or perceived environmental contamination; these properties are known as "brownfields." Once remediated, these properties can be reused in accordance with applicable local and state regulations.

Under the auspices of the Brownfields program, and assisted by federal and state funds, the Town/Village of Harrison began planning to remediate 16.1 acres along the Beaver Swamp Brook.

1.2 May 2002 Proposed Remedial Action Plan (PRAP)

The original 2002 PRAP focused on site contamination and remediation, identifying the proposed reuse of the property as a wildlife/nature preserve and educational center. In commenting on the 2002 PRAP, the City expressed serious concerns regarding the potential flooding, stormwater and wetland impacts associated with the preferred Remediation Alternative, opposed adoption of the plan, and requested involvement in the SEQR process going forward.

In 1997, the Town of Harrison began investigations on what is now known as the Beaver Swamp Brook Environmental Restoration Site (Site No. B-00109-3). In 2004, the Town completed acquisition of the necessary parcels that now comprise the 16.1-acre site immediately adjacent to Beaver Swamp Brook and generally bounded by Osborn Road to the north, Park Avenue to the south, Belmont Avenue to the east (across the Brook) and Oakland Avenue and to the west. With the exception of two small sections in the southwest corner at Oakland Avenue and Glen Oaks Drive, and at the end of Glen Oaks Drive, the entire site is within the 50-year and 100-year floodplain. The site contains the NYS-designated Wetland J-3, a Class II wetland consisting of very deep organic soils rare in the region, and adjacent areas of upland, many of which were wetland prior to historical filling. Land uses around the site are primarily residential and commercial. According to the PRAP, the site was primarily farmland in the early 1900's, and in the 1920's and 1930's portions of the site were filled to construct residences. In the 1940's and 1950's, commercial facilities were developed on the periphery of the site and in the 1970's, additional areas were filled to promote commercial development. Illegal dumping has occurred along the western perimeter of the site, along Oakland Avenue.

The 2002 PRAP addressed site reuse as follows:

> "Once the Beaver Swamp Brook Site is remediated, the Town/Village of Harrison proposes to develop the property as a wildlife/nature preserve with low maintenance trails that would provide public access to the variety of vistas hidden on the site. In addition, a local nature center will use the site in their educational programs for area schools."

The public comment period on the 2002 PRAP began on May 12, 2002 and ended on June 25, 2002. A public hearing was held on May 30, 2002. In a letter dated June 25, 2002, the City filed comments on the PRAP requesting that "...no preferred remediation alternative be selected until additional information has been provided and the following comments addressed."

The City's letter went on to raise serious concerns with the potential flooding impacts associated with filling within the 100-year floodplain and floodway, recognizing that "there are significant numbers of properties downstream from the project area that could be adversely impacted by even slight changes in flood elevations." The letter stated that Alternatives 4 and 5, while more costly, would be more consistent with Federal, State and Local floodplain mitigation regulations. The City questioned protection of the on-site State-designated Class II wetland (J-3), stating that neither the weighing standards contained in the Statewide Minimum Land Use Regulations for Freshwater Wetlands (6 NYCRR Part 665) nor the State's Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation could be met.

The City further asked to be a participant in meetings with DEC regarding the status of any proposed impacts to this wetland shared by the two communities. With regard to consistency with remediation criteria, the City pointed out that the more expensive alternatives (4 & 5) met or exceeded at least 5 of the 7 criteria evaluated in the PRAP and fully met the threshold criteria; the single criterion apparently better met by the preferred alternative was cost, largely due to the fact that long-term maintenance and mitigation costs had not been adequately considered. Finally, the City questioned the applicability and appropriate completion of requirements under SEQRA. In this comment, the City specifically requested to be included in the process as an Interested Agency, that a coordinated review be conducted, that it be notified of any determination of significance with respect to this matter, including a Negative Declaration prepared on an Unlisted Action, and that it receive all documents as required by Section 617.12(b) of SEQR.

As a result of the City's comments and DEC evaluation the Department rescinded the 2002 PRAP.

1.3 February 2003 PRAP

The revised PRAP proposed to remove more material from the site and identified fewer remediation alternatives. The costs of all but the preferred and no action alternatives were substantially increased. The proposed future use for the site is presented as "recreational" but no additional details are provided in the text of the Plan.

In January 2003, the City of Rye received a response from the DEC Division of Environmental Remediation to its comments on the 2002 PRAP. In that letter, DEC advised the City that the May 2002 PRAP had been rescinded and would be superseded by a revised PRAP and new public review process.

The revised PRAP contained significant changes from the 2002 PRAP, including reduced site acreage (14.2 as opposed to 15) despite acquisition of additional holdings; a three-fold increase in the amount of material to be removed from the site; and significantly revised Remedial Alternatives. Most notably, the 5 alternatives offered in the 2002 PRAP were reduced to 4 alternatives in the 2003 PRAP, and the costs of all but one were substantially increased (e.g., Alternative 2, the preferred alternative, increased in estimated cost by approximately 25% while alternatives 3 and 4, roughly coincident with the Rye-preferred, increased by 80% and 90%, respectively).

On March 24, 2003, the City filed a letter with DEC DER requesting once again that DEC conduct the appropriate flood impact analyses to confirm that the fill associated with the remediation project "properly mitigates potential flood impacts according to DEC standards."

1.4 March 2003 Record of Decision

Between the 2002 PRAP and the 2003 ROD, there were significant substantive changes to the scope of the proposed reuse of the Beaver Swamp Brook site. The public was not notified of these significant revisions to the proposed reuse of the site because the changes were not included in the public information materials that accompanied the 2003 PRAP, or in the document itself.

In March 2003 the NYS DEC issued the ROD for the Beaver Swamp Brook Site (No. B-00109-3). According to the Summary of the Remediation Goals and the Proposed Use of the Site (Section 6),

> "At a minimum, the remedy selected must eliminate or mitigate all significant threats to public health and/or the environment presented by the hazardous substances disposed at the site through the proper application of scientific and engineering principles."

The ROD selected Alternative 2, the alternative preferred in the original PRAP (May 2002). It stated that use of the site would be restricted to recreational activities and that the proposed future use, a recreational facility, included Little League and soccer fields, and a nature trail. No specifics regarding this proposed development were provided, and no other specific actions are identified in the ROD.
The ROD identified relatively low concentrations of contaminants in groundwater (verified through data collected from on-site monitoring wells during the SIRAR process) indicating that groundwater quality is not an environmental concern at the site.

Construction of the Remediation Project began in October 2004 and was completed in 2005. In August 2005, the Town met with DEC to discuss the wetland permit that would be needed for the proposed recreational redevelopment project.

2.0 PROJECT DESCRIPTIONS

2.1 Remediation Project

Wetland restoration areas used to offset wetland loss contain consolidated surface debris under the soil cover calling into question the degree to which these areas are improved wetlands. The Remediation Project committed to compensate for wetland filling (Wetland B and parts of Wetland A) through wetland creation and specifically, construction of a wetland pond. Two significant projects were added to the construction elements: Glen Oaks Drive and storm sewer construction and substantial reconstruction of Oakland Avenue and its drainage system. Outfall 28 was moved closer to the brook. Neither project was identified in either the 2002 or 2003 PRAP or the ROD.

The Beaver Swamp Brook Remediation Project elements presented in the 2003 ROD are as follows:

1. removal of petroleum-contaminated soil and sediment in upland, wetland and stream areas;
2. removal of 9900 cy (4950 tons) of surface debris from the site east and west of Grant Avenue;
3. complete soil cover and 2-foot fill of areas west of Grant Avenue, with a commitment to create wetland mitigation areas to compensate for the wetland filled by this action (delineated Wetland B, approximately 0.76 acres);
4. cover east of Grant Avenue in non-wetland areas and portions of Wetland A:
5. excavation to a depth of 1 foot and backfill to original grade in additional wetland areas east of Grant Avenue and beyond the limit noted above, consolidating under the soil cover 50% of the excavated surface debris (bricks, concrete etc.);
6. placement of a deed restriction to warn future owners of the site of potential exposures during intrusive site work; and
7. annual certification to DEC regarding maintenance of the soil cover, O& M and continuation of the deed restriction.

Installation of the soil cover east of Grant Avenue extended well into the State wetland at several locations. The ROD identifies these as "Wetland Restoration Areas" but they were fully functioning systems before remediation. Restoration included consolidating approximately 50% of the excavated surface debris under the soil cover.

From the 100% Design Basis Report dated August 2004, it is also known that::

- During initial stages of the design phase, the Town acquired clean fill at no cost and stockpiled 10,000 cy temporarily onsite with DEC approval;
- Improvements were made to Oakland Avenue to elevate the road and enlarge the drainage system to pass stormwater volume and peak flow from upstream drainage areas directly to Beaver Swamp Brook …in the interest of alleviating flooding in that area which would be further exacerbated with placement of the soil cover."
- Proposed wetland mitigation areas were to be excavated to elevation 28 ft and backfilled with 1 foot of suitable wetland topsoil resulting in a final elevation of 29 ft.
- Design groundwater elevation was assumed to be 30 feet (Appendix A).

- Glen Oaks Drive and storm sewer were constructed as part of the Remediation Project.

2.2 Site Redevelopment/Restoration Project

The Redevelopment Project would occupy an area of approximately 5 acres adjacent to Oakland Avenue extending east to the wetland limit. The Redevelopment Project would require floodplain and wetland filling in amounts not quantified.

According to the "Proposed Conditions and Grading Plan for Beaver Swamp Park" dated November 2006 by Woodard & Curran, the project now before NYSDEC for a freshwater wetland permit consists of a regulation sized baseball field with stadium bleachers, dugouts and bullpen; a multi-purpose athletic field approximately 280' by 170' at 1.5% grade, designed to drain to Beaver Swamp Brook and composed of synthetic turf; internal ring roads around each field; a parking lot approximately 260' by 120'; and accompanying drainage, utilities and related infrastructure. The baseball field is situated with home base at the intersection of Oakland Avenue and Glen Oaks Drive; the multi-purpose field is adjacent to and parallels Oakland Avenue; the parking lot parallels Glen Oaks Drive to the west, which was constructed as part of the Remediation Project. The baseball field is accessed from the intersection between Oakland Avenue and Glen Oaks Drive via stairs that accommodate the approximate 4-foot field elevation above road grade (Oakland Avenue was raised 1-3 feet along its length as part of the Remediation Project). The development envelope is approximately 5 acres, excluding the wetland walkway which was built as part of the Remediation Project.

The amount of fill associated with the project can only be estimated due to the lack of comparably scaled plans illustrating pre-remediation (existing), post-remediation and post-redevelopments grades. However, elevations for the baseball field generally range between 34 and 38 feet; post-remediation grades in this area range from 30 to 36 feet with most of the area between elevation 32 and 33. Pre-remediation grades in this portion of the site ranged between 29 and 34 feet. The baseball field will be graded to drain to the brook and served by perimeter drains. The ultimate level of fill is estimated to range from 2 to 6 feet throughout.

According to the plans, elevations in the vicinity of the multi-purpose athletic field range between 33 and 35.5 feet; post-remediation grades in this area range from 28 feet at the pond to 33.5 feet throughout most of the area; pre-remediation elevations generally ranged between 29 and 30 feet. The ultimate level of fill is estimated to range from 1 to 5 feet throughout.

Elevations in the vicinity of the parking lot range from 34.5 along Glen Oaks Drive to 32.5 in the wetland. Post-remediation elevations range from 34 along Glen Oaks Drive to 30 in the wetland edge. Pre-remediation elevations generally range from 33 near the location of Glen Oaks Drive to 29 in the wetland. The ultimate level of fill in this area is estimated to range from 2 to 3 feet.

It is assumed that the lower elevations denoted for the multi-purpose field and parking lot within the wetland (33 feet and 32.5 feet) are accurate in spite of the contradiction in the Geotechnical Report in the 100% DBR which states that "based on a review of the proposed development map, the baseball and soccer fields, parking lots, roadways and playgrounds will have final graded surface elevation of 34 feet or greater."

3.0 IMPACT ANALYSIS

The following analysis reviews the wetland impacts and stormwater impacts for the completed remediation project and the proposed redevelopment project which is the subject of the current application.

The analysis is based on documents submitted to the DEC in August of 2006 in application for a Freshwater Wetland Permit for the Redevelopment Project. A considerable number of additional reports, correspondences, maps, plans, and references have been consulted, including but not limited to both the 2002 and 2003 PRAP's; the March 2003 ROD; the "100% Design Basis Report for the Beaver Swamp Brook Remediation NYSDEC Environmental Restoration Program," dated August 2004; the "Hydrologic/Hydraulic Analysis of Beaver Swamp Brook Watershed," dated October 2002 by Montgomery Watson Harza; the "Channel Maintenance and Sediment Management Plan for Beaver Swamp Brook," dated August 2003 by Montgomery Watson Harza; the "Wetland Delineation Report for the Beaver Swamp Brook Brownfields Remediation and Redevelopment Site, Harrison, NY," dated September 2002 by Malcolm Pirnie, Inc.; and consultant and State memoranda relating to wetlands and stormwater concerns.

3.1 Wetland Impacts

3.1.1 Remediation Project

The wetland on the Beaver Swamp Brook site is a Class II NYS-designated freshwater wetland (J-3), unusual in size and classification for southern Westchester. It is characterized by highly organic Carlisle soils, also rare in Westchester County. These soils are severely limited for development due to low strength and high subsidence; conversely, they are important in protecting water quality and mitigating flood flows. Information presented in the PRAP and ROD suggests this wetland was high-functioning even before remediation.

The ultimate impact of the Remediation Project on the wetlands cannot be verified; at minimum, nearly all of Wetland B and portions of Wetland A were filled to remediate the site. A small part of Wetland B, excavated to create a pond, was counted as wetland and water quality mitigation but does not maximize storage as was committed to in the PRAP.

The Wetland Restoration/Enhancement Areas were pre-existing functional wetlands and the Enhanced Wetland Buffer Areas are Mitigation Areas that do not meet wetland criteria; therefore, there is a net loss of wetland associated with the site remediation.

The eradication of common reed and other species in favor of more desirable wetland plantings has destabilized the system. Based on the return of invasive species within one year of project completion, routine herbicide applications will be required to maintain the post-remediation condition.

According to the September 2002 Wetland Delineation Report prepared by Malcolm Pirnie, a total of 8.68 acres of wetland were mapped at the project site prior to remediation. This acreage constitutes the portion of NYS Wetland J-3 west of Beaver Swamp Brook; the

wetland continues on the east side of the brook. Of the total wetland area on-site, 0.76 acres occurred west of Grant Avenue; 7.92 acres lay east of Grant Avenue.

The site wetlands are characterized by highly organic soils of the Carlisle series. These soils have formed over time since the last glaciation and are relatively rare in the region; in Westchester County, this series makes up less than 2% of extant soils. At the site, as verified by the Geotechnical Report in the 100% Design Basis Report (DBR), these soils vary from 12 to 55 feet below the base of the fill, with the deepest deposits located near Park Avenue and east of the proposed ballfield. The Geotechnical Report further recognizes that these organic soils are very soft and "...generally rated as "weight of hammer" meaning that the split spoon sampler sank under its own weight when collecting a sample of this material. ...Based on these conditions, any structures bearing on this layer would be subject to excessive settlements." The report goes on to point out that Oakland Avenue rests on 4 to 5 feet of fill and although it has existed for many years, it has suffered severe maintenance problems due to settlement.

Carlisle-based wetlands, in addition to being rare in Westchester County, are valuable for their water quality function and ability to adsorb and trap pollutants. The facts that the PRAP and ROD found relatively low concentrations of contaminants in groundwater at the site despite the levels of soil contamination, and that downstream sediment contamination due to mobilization of pollutants was relatively low, both support the premise that this wetland was highly functioning before remediation and "restoration." These soils have extremely high porosity (~ 80%) and are 80% water by volume when flooded. When compared with mineral wetland soils with porosities of 45-55%, these soils are significantly more useful in accommodating flood discharge.

The ultimate impact of the Remediation Project on the wetlands cannot be verified as it is unclear which plan eventually was implemented. The August 2003 100% DBR Figure labeled "Proposed Remediation & Wetlands Restoration Plan, Beaver Swamp Brook" which appears in Appendix A conflicts with the wetland restoration information presented on a later figure dated June 2004 and titled "Beaver Swamp Brook Remediation NYSDEC Environmental Restoration Program, Sediment and Erosion Control." Although this last figure references sediment and erosion control, it contains the key for wetland mitigation, restoration and enhancement areas, and differs from the August 2003 figure. At the very least, it is clear that most of Wetland B was filled, with a small portion excavated to serve as a pond that was counted as wetland (and water quality) mitigation; according to the 2003 PRAP, it was to be designed to maximize storage.

Significant additional areas of Wetland A were filled to above wetland grade. The remainder of Wetland A that was remediated by excavation of 1 foot of soil and surface debris, was backfilled to maintain pre-existing grade and replanted to wetland vegetation; this area was identified as Restored Wetland. According to the PRAP, in these areas "...approximately 50% of the excavated surface debris (inert material such as bricks, concrete, etc.) was consolidated under the soil cover."

At least four additional areas adjacent to or within the wetland were marked for wetland mitigation. According to the Stormwater Pollution Prevention Plan in the 100% DBR, Wetland Mitigation Areas were excavated, graded and replanted with wetland vegetation. The most southern of the mitigation areas that appears in both figures (north of Park Avenue) is mapped as wetland in the post-remediation wetland delineation by Evans and Associates

(dated November 2006), but not the delineation prepared by Malcolm Pirnie in 2002. The original elevations in that area, 29-30 feet, strongly suggest the presence of original wetland (as it appears on the Evans map). This is supported by the facts that the proposed wetland mitigation areas were to be excavated to elevation 28' and backfilled to a final elevation of 29', and that design groundwater elevation was assumed to be 30 feet (Appendix A of the 100% DBR).

In 2004 and 2005, the Town completed the Remediation Project. In August 2006, they met with DEC regarding the wetland permit needed to construct the Redevelopment Project. In October 2006, Woodard & Curran, consultants to the Town, completed the post-remediation wetland delineation and walk-through with DEC. The delineation identifies the following:

- 8.23 acres of Wetland (the boundary in the southwest portion of the site has been expanded)
- 0.58 acres Enhanced Wetland Buffer Area (non-wetland)
- 4.54 acres of Wetland Restoration/Enhancement Area (pre-existing wetlands)

None of the Wetland Mitigation Areas currently meets wetland delineation standards. Enhanced Wetland Buffer Areas are now the Mitigation Areas in the Remediation Plan. As of fall 2006, these areas had not established as wetland and it is questionable that they ever will do so. The DEC staff noted on inspection that non-native invasives had begun to encroach in at least one area and that "there is no water." This category appears to now include an additional area off-site and across Park Avenue but not contiguous to the original wetland.

Wetland Restoration/Enhancement Areas include those where invasive wetland species, surface debris and impacted soils were removed, and wetlands planted; approximately 50% of surface debris was consolidated under the soil cover. These areas were wetlands before remediation.

Since the Wetland Restoration/Enhancement Areas were wetlands originally, and since the Enhanced Wetland Buffer Area is not functional wetland, there has been a net loss of onsite wetland as a result of the Remediation Project.

Beyond the actual loss of wetland acreage, this portion of Wetland J-3 is no longer a self-sustaining system due to the removal of "unfavorable" wetland vegetation onsite and the need for long-term applications of herbicide (Glyphosate) over a 9-acre area to maintain the new plantings. While removal of "invasives" is a well-intended management initiative, in an urban watershed with moderate water quality, re-establishment of native reed and similar species is highly likely. Although it may be common, reed has the benefit of binding eroding substrate, sequestering nitrogen and providing a visual buffer.

3.1.2 Redevelopment Project

A proposed facility layout apparently was approved by DEC on December 23, 2002, before either the revised PRAP or ROD had been issued. It appears that the concept plan approved by DEC in December 2002 became the baseline for trading wetland impacts as the plan progressed. Rather than being required to demonstrate that any and all proposed wetland fill was unavoidable and the least environmentally damaging and practicable alternative, Harrison was allowed to use changes in its own

development plan to meet the State's no net loss standard. Harrison was not required to follow mitigation sequencing in which wetland impacts must first be demonstrated to be unavoidable, then minimized and finally, compensated.

There is a net loss of wetlands associated with the Redevelopment Project over and above the loss associated with the Remediation Project. The original 8.7 acres of wetlands west of Beaver Swamp Brook will be 7.84 acres post-redevelopment; if the area currently mapped as wetland was in fact original wetland, the amount of acreage lost is even greater.

Mitigation measures constructed as part of the Remediation Project would be destroyed by the Redevelopment Project. Both wetland mitigation areas and the pond that was constructed for wetland/water quality mitigation would be filled to construct the multi-purpose athletic field. These measures were established to meet stormwater and wetland permit requirements for the remediation project, to support a finding of no significant impact for the remediation project, and built with public funds; they should not be allowed to be removed.

According to correspondence between Malcolm Pirnie and DEC (letter from Anthony Catalano to Marc Moran dated November 9, 2004), prior to issuance of the ROD, meetings were held with NYSDOH and NYSDEC Wetlands and Remediation divisions to present the proposed redevelopment plan for the property following remediation. DEC expressed concern about the potential loss of wetlands at the site. Malcolm Pirnie responded to this and other comments in a letter dated December 6, 2002, indicating that the Town had modified its plan to meet no net loss of wetlands east of Grant Avenue. On December 23, 2002, DEC approved the proposed facility layout, several months prior to issuance of the 2003 PRAP and ROD.

On November 9, 2004, the Town of Harrison petitioned DEC for a change in the soccer field to fill an additional 24,000 sf of wetlands. In return, the Town offered to not develop a "prior-approved" portion of the project intended for parking. On December 3, 2004, the Town's Consultant reduced the wetland encroachment to 22,000 sf and stated that

> "In addition to the 24,000 sf of wetlands the Town is offering in the northeast corner of the site which will result in a loss of parking spaces related to the proposed facility, the Town is also offering to create an additional 6000 sf of wetlands at the south end of the site, opposite Park Avenue. ...As indicated, the final result will be a net gain of wetland area of approximately 8000 sf when compared to the originally agreed upon layout." (Emphasis added)

DEC approved the change by letter dated 12/21/04. It appears that the concept plan approved by DEC in December 2002 had become the baseline for trading wetland impacts as the plan progressed. Rather than being required to demonstrate that any and all proposed wetland fill was unavoidable and the least environmentally damaging practicable alternative, the Town was allowed to use changes in its own development plan to meet the State's no net loss standard. Moreover, the Town was not required to follow mitigation sequencing in which wetland impacts must first be demonstrated to be unavoidable, then minimized and finally, compensated.

The summary of wetland impact according to the Woodard & Curran wetland permit application dated 11/14/06 is:

- 0.42 acres Total Proposed Upland Wetland Buffer Area (mitigation)
- 7.9 acres Wetland Area (actual is 7.84 acres)
- 0.56 acres Enhanced Wetland Buffer Area (mitigation)
- 4.5 acres Wetland Restoration/Enhancement Area (pre-existing wetlands)

The Upland Wetland Buffer Area would consist of a public access-restricted area planted with a variety of upland plants, shrubs, and tree species. It is not clear what locations constitute this area as it does not appear on the Post-Remediation Wetland Survey; however, the newly proposed 6000 sf of wetland to be created south of Park Avenue does appear on the survey, is immediately adjacent to a residence, and is not contiguous with the site wetland.

The Wetland Restoration/Enhancement Area consists of pre-existing functional wetlands; the Enhanced Wetland Buffer Area is not functional wetland; and the Proposed Upland Wetland Buffer is upland; therefore, there would be a net loss of wetlands associated with the Redevelopment Project over and above the loss associated with the Remediation Project. The original 8.7 acres of wetlands west of Beaver Swamp Brook would drop to 7.84 acres post-redevelopment.

If the Redevelopment Project is built as designed, there would be no buffer remaining along the northern portion of the wetland.

Mitigation measures constructed as part of the site remediation also would be filled under the Redevelopment proposal. The Beaver Swamp Brook Pond, designed as wetland/water quality mitigation for the Remediation Project, would be completely filled and developed; it is not clear why this would be permitted in light of the federal and State approvals that were granted based on wetland and stormwater quality mitigation. In addition, it appears that the northernmost of three wetland mitigation areas west of Glen Oaks Drive, also approved and developed as part of the Remediation Project, will be filled.

3.2 Stormwater Impacts

3.2.1 Remediation Project

While the increased volume and peak flow from changes in surface topography are presented as insignificant, they also are separated from other stormwater impacts. The results of the TR-55 analysis for the site alone arguably could be altered to demonstrate measurable impact by assigning different curve numbers to the pre- and post-remediation wetland areas. Significantly, neither the contribution of flow from the Oakland Avenue reconstruction nor the Glen Oaks Drive improvement and outfall is presented. As a result, the total impact from the site is seriously understated.

The Remediation Project excavated and backfilled wetlands and adjacent areas on the project site; in some areas, backfilling required installation of a geotextile cap and backfill with a soil cover above existing grade. Since nearly the entire site is within the 50- and 100-year floodplains, the City of Rye expressed concern with loss of storage on the site and its impact on flooding in its comments on both the 2002 and 2003 Proposed Remedial Action Plans.

The 100% Design Basis Report identifies two additional projects constructed as part of the Remediation Project but not identified in the PRAP or the ROD. They are:

- roadway and drainage improvements along Oakland Avenue; and
- construction of Glen Oaks Drive, a 46-foot wide, divided lane roadway off Oakland Avenue, and its associated storm sewer and outfall.

There are three potential sources of stormwater impact associated with the Remediation Project and additional road improvements:

(1) Increased volume and peak flow to the brook from the collection and transport of additional drainage area (Oakland Avenue Improvements);
(2) Increased volume and peak flow from the site changes in surface topography, compaction and grade; and
(3) Loss of floodplain storage associated with fill and other activities on-site.

Hydrologic impacts from the Remediation Project are specifically addressed in the 100% Design Basis Report. The hydrologic analysis in the SWPPP appears to target the remediation project specifically, while Appendix I analyzes the pre-remediation and post-redevelopment phases.

3.2.1.1 Oakland Avenue Improvements

The Oakland Avenue improvements are presented as necessary measures to mitigate stormwater impact from the remediation project, but the remediation project analysis rejects a finding of any stormwater quantity impact from the project. No comparable mitigation was provided for any of the other potential stormwater impacts generated by this project.

The Oakland Avenue improvements themselves are a source of potential significant impact on flooding at this location. Accepting the assumptions in the analysis regarding the capacity of the pre-existing pipes, a maximum of 24.6 cfs or less would have been delivered to the outfall pipe to Beaver Swamp Brook under the existing condition (pre-remediation). The flow delivered to the brook under the post-remediation/post-improvements condition would be 96.62 cfs for the 25-year storm. This represents a nearly 300% increase in flow to the brook at this outfall (OF28). If the improved condition pipes were sized to also accommodate the Redevelopment Project contributions, as it appears is the case based on the total capacity of the improved pipe system, the additional flow contribution to the brook would be even greater.

The Oakland Avenue improvements were omitted from Harrison's SEQRA review, and they clearly would not qualify as Type II or Exempt actions as they are not repair/replacement in kind.

The Stormwater Mitigation Plan for the redevelopment project consists of a wet pond designed to treat the quality of runoff from the site. Since the pond that was constructed is bypassed by the Oakland Avenue drainage and most of the site drains directly to the brook, this measure has little water quality function. The pond should be expanded and redesigned to more fully meet its intended purpose,

particularly in light of the fact that it is required by both the ROD and the Stormwater Pollution Prevention Plan prepared to comply with the SPDES General Permit #GP-02-01 issued for the remediation project.

3.2.1.1.1 Project Description

The 100% DBR describe the improvements in relation to the remediation project as follows:

> "Remediation efforts involve removal of contaminated soil from select areas, and backfilling with clean fill. All areas where subsurface debris exists and the areas where contaminated soils are removed will be isolated with a two foot soil layer. The two foot soil layer will essentially serve as the base grade for redevelopment of the site. ...A hydrologic analysis of the site was performed considering the final redevelopment plans. Efforts include the analysis of hydrologic characteristics of the site, development of peak flows, and preliminary design of an appropriate Stormwater management practice ... to address peak flows and water quality.... In addition, an upgrade to the Stormwater utilities adjacent to the site on Oakland Avenue is being designed to pass stormwater volume and peak flow from the surrounding area directly to Beaver Swamp Brook, in the interest of alleviating existing flooding in that area which could be further exacerbated with the placement of the soil cover."
>
> Historically, the Town of Harrison has experienced chronic flooding along Oakland Avenue adjacent to the site and is interested in regrading and rehabilitating that stretch of road as part of the remediation work to improve flooding conditions. Currently there is a sag in the road (approximately 320 feet from the intersection of Oakland Avenue and Halstead Avenue) that is serviced by a system of four catch basins, which are connected to a broader stormwater utilities system. Based on a site visit (November 7, 2003) the catch basins appeared to be in various states of disrepair. The utilities converge at one point and feed into an existing drainage channel which feeds into the Brook created earlier by the Town to attempt to alleviate flooding.
>
> The proposed rehabilitation involves raising the level of Oakland Avenue by approximately 4 feet and resizing the existing stormwater utilities to adequately convey the volume of flow away from Oakland Avenue. ...Since the site is to be redeveloped to a recreational facility the current drainage channel will be filled to the intersection of that channel and Grant Avenue. A pipe is proposed to be installed to carry flow from Oakland Avenue and to discharge closer to Beaver Swamp Brook. Water quality and erosion prevention features shall be incorporated including a manhole structure at the inlet, and outfall structure consisting of a gabion headwall and a vegetated swale lined with erosion control matting. (Appendix I, emphasis added)

The Oakland Avenue elevation was actually raised 1-3 feet along its length, and the stormwater pipe sizes increased from 15 and 18 inches to two 24-inch pipes south of the 36-inch outfall pipe and two pipes north of the outfall pipe, one 12 inches and one 36 inches. The pipes south of the outfall pipe appear to have been sized to support the Redevelopment Project.

3.2.1.1.2 Project Need

Oakland Avenue has experienced localized flooding for many years unrelated to the project site. Flooding derives from the large and highly developed areas that contribute flow to this point and the size of the drainage infrastructure relative to contributing flow.

Flooding has been exacerbated by the settling of the road over the years, as it is located in highly organic material similar to the remediation site.

The Oakland Avenue Improvements were added to the remediation project during the 50% Design Basis Report. Correspondence between the Town consultants and the State describe an understanding that reimbursement for construction items related to the improvements would be limited to

> "...those elements that are required as a result of the remediation work. For example, to minimize impacts to flooding along Oakland Avenue, the grades at certain locations will be raised and the storm water piping and catch basins replaced." (June 4, 2004 letter from Malcolm Pirnie to NYSDEC, emphasis added)

This acknowledgement that stormwater impacts resulted from the remediation work is contradicted by the Hydrologic/Hydraulic Analysis developed for the SWPPP and presented in the 100% DBR which found no volume/peak flow impact associated with the remediation project:

> "The drainage area in both the pre-development and post-development conditions shall remain the same due to similar runoff flow paths....
>
> Based on current information and assumptions, there will not be a need to attenuate peak flow from the site. The proposed SMP, a wet pond, will be designed to treat the quality of runoff from the site."

It is difficult to understand how the remediation work could contribute to flooding on Oakland Avenue when the site drains disproportionately to the brook and no volume or peak flow impact was identified in either the SEQR or project documents. In addition, the Oakland Avenue improvements would qualify as significant mitigation if they were impact-related. At the same time, no comparable mitigation was provided for any of the other stormwater impacts generated by the remediation project. Further, the improvements themselves are a source of impact in terms of contributions to the brook at this location. Finally, the Oakland Avenue reconstruction did not comply with SEQR and is not repair/ replacement in kind; rather, it represents a significant change in road elevation, size of infrastructure, and discharge to the brook.

3.2.1.1.3 Hydrologic Analysis

The Hydrologic Analysis prepared for the Oakland Avenue improvements as part of the SWPPP for the remediation project considered 2 contributing drainage areas and used the longest hydraulic path based on the assumption that flows would enter the extensive storm system throughout these areas; from that point, the physical characteristics of the pipes as indicated on utilities maps were used to determine travel time. Additional assumptions included:

- a contributing drainage channel from Haviland Street draining a 4.68-acre area;
- contributions from a second area draining 19.95 acres of commercial/industrial development;
- that all contributing drainage would be via concrete pipes flowing half full;
- that flows

- using the largest time of concentration of those calculated for each drainage area using TR-55.

The analysis further stated:

> "While a system designed for the maximum flow would be conservative, it can be impractical. Stormwater utilities are generally designed for a relatively large but frequent storm event. The 25-yr 24-hour storm with a total depth of 5.75 inches will be used to design the utilities upgrade."

Design for a larger storm event would be "impractical" at this location due to the very significant volume from contributing drainage areas.

To determine the capacity of the current Oakland Avenue lines, the existing characteristics were used to measure the maximum flow that could pass through them. Area 1 had a capacity of 12.3 cfs. Since the final invert elevation for Area 2 was "inaccessible and unknown," the capacity for this line was considered to be less than Area 1 because the pipe was smaller (15" v. 18" respectively). The analysis found that for both areas, the existing Oakland Avenue stormwater lines were inadequate and unable to pass the flows calculated:

> **"Preliminary analysis using the flows calculated... indicates that the existing pipes need to be considerably increased in diameter. ... Area 1 would require a 24-inch pipe while Area 2 would require a 42-inch pipe. The size of a single circular pipe discharge structure required to pass and discharge the combined flows of the two Areas to the Brook is approximately 48 inches."** (Emphasis added)

Peak flow for Area 1 was calculated to be 16.30 cfs; peak flow for Area 2 was 80.33; the **combined flows totaled 96.62 cfs for the 25-year storm**. Accepting the assumptions regarding the capacity of the pre-existing pipes, a maximum of 24.6 cfs or less would have been delivered to the outfall pipe to Beaver Swamp Brook under the existing condition (pre-remediation); again, accepting the figures given, the flow delivered to the brook under the post-remediation/post-improvements condition would be 96.62 cfs for the 25-year storm. This represents a nearly 300% increase in flow to the brook at this outfall (OF28). If the improved condition pipes were sized to also accommodate the Redevelopment Project contributions, as it appears is the case based on the total capacity of the improved pipe system, the additional flow contribution to the brook would be even greater.

3.2.1.1.4 Water Quality Mitigation

The Hydrologic Analysis found no need to attenuate peak flow from the site. It therefore proposed a stormwater mitigation plan consisting of a wet pond designed to treat only the quality of runoff from the site. However, since the pond that was constructed is bypassed by the Oakland Avenue drainage, and since most of the site drains directly to the brook, this measure has little water quality function as designed. The pond should be expanded and redesigned to more fully meet its intended purpose, particularly in light of the fact that it is required by both the ROD and the Stormwater Pollution Prevention Plan prepared to comply with the SPDES General Permit #GP-02-01 issued for the remediation project.

3.2.1.1.5 2005 Analysis

The Oakland Avenue stormwater issue was further analyzed out of concern that the very large catch basins needed to accommodate the increased pipe sizes could not be supported by the underlying soils without significant settling. In a memorandum dated February 1, 2005, town consultants reanalyzed the stormwater utilities leading from Halstead Avenue directly south along Oakland Avenue to consider a reduction in pipe size to allow for a corresponding reduction in catch basin size. The intention was to demonstrate reduced peak flow arriving at the project site along Oakland Avenue by reconsidering land cover and flow paths within micro-drainage areas and recalculating the times of concentration to avoid stacking of peak flows at the design point. The original analysis was redone but achieved only a slight drop in peak flow that was offset by a slight increase in another subarea. According to the memorandum,

> "...the northern micro-drainage areas are heavily built out.... These land uses present a large amount of impervious surfaces that conveys surface flow efficiently and quickly. As such, given the existing topography, the amount of impervious surface, and the efficiency of stormwater sewers, flow in this area converges on ... Oakland Avenue at approximately the same time (~10 minutes)."

The reanalysis also evaluated the impact of allowing the use of smaller pipes (30" and 36"), but this resulted in surcharging. As an alternative, the memorandum suggested that the design criteria could be lowered to a 5-year design storm from the 25-year event to allow a 36-inch pipe to be used. With use of the 5-year design storm, the memo noted that "Should the 10-year storm occur ... ponding would still be expected to occur."

The design drawings for the Oakland Avenue Improvements indicate that a significantly larger double pipe system was installed and will discharge the 25-year and likely higher intensity storm(s). For the 25-year storm, the contribution of peak flow directly to the brook at this location is approximately 100 cfs which, given the increase in pipe size, the bypass of the on-site pond for detention or water quality treatment, the extension of the outfall brookward, and the loss of floodplain storage represents a significant stormwater impact. This discharge is increased when combined with the new Glen Oaks Drive outfall. If these peak discharges occur and are evacuated from the brook before the flood crest in that location, it could be argued that the improvements would have no impact at this point; however, there is no information to support this and the flat gradient of the brook in this area, along with the abrupt increase in bottom elevation at Park Avenue and associated backwater effect make this unlikely.

3.2.1.2 Site Remediation Activities and Glen Oaks Drive

While the TR-55 analysis of the site finds no significant change in volume or peak flow from the site remediation activities, a different result could be generated by selecting different CN values for existing and post-remediated areas. The drainage from the new Glen Oaks Drive is not discussed; there is no way to gauge the stormwater impact from this project. There are no data to demonstrate that the constructed pond can perform water quality mitigation for the site.

Appendix D of the 100% Design Basis Report (August 2004) contains the Stormwater Pollution Prevention Plan for the Remediation Project (SWPPP) dated July 2004. The

Plan states that a SPDES General Permit for Stormwater Discharge from Construction Activities is required because the disturbance associated with the project will result in approximately 12.8 acres of total disturbance.

The SWPPP states that remediation will add 17,320 sf of paved impervious to the site for the Glen Oaks Drive improvements, but that 46,000 sf of paved area/gravel-covered impervious area will be removed. The removed area consists of Grant Avenue (approximately 18,000 sf) and a 27,900 sf area of "gravel-covered impervious." The net is a loss of 28,680 sf of paved impervious surfaces at the site. There are no figures to identify the gravel-covered impervious area in question or to confirm its status as impervious.

The SWPPP also states that the drainage area in both the pre- and post-remediation conditions will remain the same, and that "...a pond with wetland vegetation is proposed for construction as contemplated in the NYSDEC ROD. This pond will contain a permanent pool which will act to further enhance water quality."

The SWPPP presents a TR-55 Analysis to support its finding that:

> "Due to a decrease in pre-development flow, no downstream structures or building will be impacted by post-development. The post-development design [will]...improve downstream erosion of the Brook because improvements shall be made to the existing wetland soil and vegetation, which surround and reside within the Brook. ...Since the downstream analysis did not take the proposed stormwater pond into consideration, ...[the] post-development peak flows will only further decrease due to the additional attenuation provided by the proposed stormwater pond."

The TR-55 analysis assigns very high CN values to most of the pre-development wetland area (CN 86, open space/poor condition) and the same CN value to the post-remediation wetland area. A relatively low CN (74) was assigned to the post-remediation capped/resoiled areas which are assessed as open space/good condition. These CN values are questionable in that the pre-remediation wetlands supported well-developed vegetative cover and corresponding high surface roughness in comparison to their post-remediation status, which would be open space/poor quality due to the lack of well-established vegetation and reduction of surface roughness. The post-remediation cap areas which were compacted, lined and topsoiled would more reasonably qualify as open space/poor-fair condition (CN 79-86). Minor manipulations of the curve numbers can influence the results of the analysis, particularly in this case where the rating of surface conversions are subjective.

The drainage from the newly constructed Glen Oaks Drive is not specifically addressed. However, it is assumed that the drainage from the roadway is collected by a new 24-inch storm sewer that discharges directly to the brook (shown on the Topographic Survey prepared for the Beaver Brook Swamp by Contractor's Line and Grade South, LLC dated November 21, 2005). This outfall is new and does not appear on the Storm Sewer Outfall maps prepared by MWHA for the "Channel Maintenance and Sediment Management Plan, Beaver Swamp Brook" dated August 2003.

The role of the wetland mitigation pond in addressing drainage and water quality is not clear. The storm sewer from Oakland Avenue bypasses the pond and discharges directly to the brook at Outfall 028.

3.2.1.3 Loss of Floodplain Storage

Loss of floodplain storage is anticipated to result in a 1-1.5" increase in flood elevations in the project area. This impact is simultaneously presented as negligible yet incapable of being mitigated in its entirety without costly downstream dredging. No mitigation was provided as part of the remediation project.

With the exception of a very small corner of the site at the intersection of Oakland Avenue and Glen Oaks Drive, and another at the end of Glen Oaks Drive, the entire site is within both the 50-year and 100-year floodplains. Because the Remediation Project backfilled a minimum of 2 feet above grade over significant areas of the site, loss of floodplain storage in this floodprone area is a serious concern.

In evaluating the need for flood mitigation as a result of the Remediation Project, the 100% DBR cites studies developed by Montgomery Watson Harza for the City of Rye in relation to Project Impact and Beaver Swamp Brook, specifically materials developed as part of the "Hydrologic/Hydraulic Analysis of Beaver Swamp Brook Watershed" dated October 2002. The 100-year flood elevations for the site vicinity are also presented as developed by MWH and outlined in a memorandum dated September 2, 2002. The existing condition is stated to be 33.36 feet, the post-remediation elevation is projected to be 33.40 and the post-redevelopment elevation is projected to be 33.51 feet. The analysis states that

> "It is evident from this preliminary analysis and from drawings showing the inundation difference between existing and post-remediation 100-year water elevations, that the increase in water elevation due to remediation activities, while small, could be addressed with the proposed future dredging work beyond the project limits."

The September 2002 memorandum referred to in the DBR projects approximately 24 acre-feet of filling within the 100-year floodplain associated with the Remediation Project. It states that this loss of site storage will result in an increase of 1.5 to 2 inches in flood elevations throughout the reach between Park Avenue and Osborn Road. The memorandum recognizes that "...practical options for effectively mitigating the entire impact of the proposed fill on flood elevations are very limited..." and identifies mitigation options that include downstream property acquisition for compensatory storage, regional flood control and major channel widening and dredging downstream of Bradford Avenue. None of these options appears in the DBR and, to the knowledge of the City, none is planned. Since these options would be expensive, it is questionable that they would ever be implemented. Moreover, it is unclear how this loss of storage, if negligible, could be so difficult to mitigate in its entirety.

3.2.2 Redevelopment Project

3.2.2.1 Increases in Volume and Peak Flow from the Project Site

Volume and peak flow impacts were evaluated by comparing the proposed redevelopment project with site conditions prior to remediation. This approach is not justified and yields a false assessment of potential impact. This approach also

relies on the projects constituting a single action under SEQRA which is not supported by the SEQR record. The analysis should be redone using an appropriate baseline condition.

In analyzing the hydrologic impact of the Redevelopment Project, the 100% DBR used the pre-remediation site condition as a baseline against which to assess site changes in impervious area, rather than the current site condition (post-remediation). The stated justification for this approach was that the remediation efforts "...are considered to be an initial phase of the project...." The more probable reason is that this approach allows the Town to take credit a second time for removing impervious surfaces in the form of Grant Avenue and the "gravel-covered impervious" areas that were excavated and filled during remediation. By doing so, the addition of impervious parking areas, ring roads, concession, bleachers, bullpen and compacted and/or synthetic fields for the current development appears to be offset by the initial impervious surface removal. In a response to comments by Woodard & Curran to NYSDEC dated 12/15/06, the consultant further argued that a full SWPPP would not be needed since "Water quality and quantity objectives will be met through the reduction of impervious surfaces by approximately 35% (the New York State Stormwater Management Design Manual requires 25%) from pre-development conditions [i.e., pre-remediation] to post-development [post-redevelopment] conditions."

If adoption and implementation of the Remediation Plan for the site conferred automatic approval of the Redevelopment Plan, the PRAP and public hearing process would have had to make that fact known. In addition, the Town would have had to complete the SEQR process to comprehensively cover both projects or, if segmenting them, outline the justification and plan to do so from the outset. Since this was not done, there is no basis for allowing impact assessment by comparison with a prior site condition. The stormwater analyses relating to volume and peak flow changes should be redone using the appropriate baseline and outlining appropriate mitigation.

In addition, it is certain that a SWPPP would be required since the project size (more than 5 acres) exceeds the 1-acre SPDES threshold for construction disturbance. The net change in the post-remediated site and the redeveloped site will be an increase in impervious area.

3.2.2.2 Loss of Floodplain Storage

The loss of floodplain storage associated with each project was not calculated; one figure is presented for both projects. It is not clear whether the single figure presumed to have been used in the analyses accurately reflects the as-built remediation and the most recent redevelopment plan, as it was prepared prior to project revisions. In any case, no mitigation is proposed to compensate for loss of floodplain storage.

There is a potential for additional floodplain storage to be lost to lateral bulging/slumping of the deep muck soils as filled and developed areas settle; past experience supports this concern.

The Redevelopment Project would further fill approximately 5 acres of the site to elevations in excess of the 100-year flood (33.36'). According to the post-remediation

grading plans, a good portion of this area, though filled for the Remediation Project, did not completely eliminate floodplain storage. The current proposal would fill to grades at or exceeding elevation 33.36 throughout most of the construction area.

In a memorandum dated October 17, 2002 from MWHA, the estimated loss of floodplain storage associated with redevelopment ranged between 11 and 25 acre-feet. (In the US Army Corps of Engineers Permit Application for the project the fill is estimated to be 2 feet over a 5.7-acre area). The MWHA analysis considered avoidance, on-site mitigation (1-1.5 acre feet of compensatory maximally), off-site storage (considered to be impractical and negligible), and off-site conveyance (channelization). The last option would be costly – approximately $1.5 million – and not completely compensatory. The summary stated that

> "A range of options for addressing concerns related to the impacts of floodplain fill associated with a potential remediation/recreation project in the Town of Harrison have been considered. If avoidance of the proposed floodplain fill is not possible, options for providing significant levels of compensatory floodplain storage within the watershed are very limited. Rather, it appears that a major conveyance improvement downstream of the project area would provide the most effective means of mitigating potential increases in flood levels resulting from the fill."

In addition to the direct filling of floodplain, there is potential for additional storage to be lost as the very deep organic muck soils slump toward the brook under lateral pressure from settling of the filled areas. The history of Oakland Avenue, the initial experience of the Town when they attempted to fill the northwest corner of the site during remediation and the Geotechnical Evaluation Report in the 100% DBR (Appendix A) supports this as a reasonable concern.

3.3 Stormwater Summary

To the extent that they can be pieced together from the various sources, the stormwater issues have been alternately segmented and related to assess impact from the Remediation Project and the Redevelopment Plan. The effect is to under-represent the actual potential impact associated with each project and to disregard the cumulative impact associated with both. For the Remediation Project there has been no comprehensive assessment of the multiple stormwater issues as they impact the project area as a whole. For the Redevelopment Project, the improper interpretation of the "existing condition" has skewed the results and made accurate analysis difficult if, not impossible, without further information. At the very minimum, stormwater mitigation and a SWPPP should be required.

The statement of no impact from stormwater (quantity or quality) is not supported by the information presented.

4.0 FAILURE TO TAKE A HARD LOOK AT POTENTIAL ENVIRONMENTAL IMPACTS UNDER SEQRA

The City's request to participate in the SEQRA process for both projects was filed in writing with DEC and Harrison on June 25, 2002; the document record indicates that the City was not treated as an Interested Agency under SEQRA.

Much of the information presented in the Redevelopment Project EAF is contradicted by information presented in project documents and in the Negative Declaration and the Structural Archaeological Assessment Form was prepared and filed after Harrison had already adopted and filed the Negative Declaration for the project.
The Negative Declaration Findings fail to identify the full range of potential significant impacts from the project and fail to adequately address the potential impact associated with the impacts that are identified. Stormwater mitigation is not specified as part of the project design, but it is used to support a finding of no significant impact.

The Remediation Project EAF contains information that contradicts the Redevelopment Project EAF. There is no Lead Agency Notice, Determination of Significance, Negative or Positive Declaration, or Reasons Supporting Determination for the Remediation Project.

None of the SEQRA documents prepared by Harrison identifies either the Glen Oaks Drive construction or the Oakland Avenue Improvements as part of their action; these projects were constructed as part of the Remediation Project.

Harrison's processing of the Beaver Swamp Brook projects under SEQRA indicates that they did not consider the "whole action." Given the partnering of the remediation project with the redevelopment project from the earliest dates, the fact that the PRAP Alternative selected by DEC was the one most favorable to establishing site conditions for the recreational proposal, the addition of project elements to the PRAP that laid the groundwork for the redevelopment project, and the references throughout project documents that the remediation was the "initial phase" of the redevelopment, these projects should have been treated as one action under SEQR and evaluated as such.

In its comments on the 2002 PRAP, the City of Rye noted that according to the NYSDEC Environmental Permits Division, remedial action plans are subject to SEQRA and are not considered Type II or Exempt. At that time, the City had requested treatment as an Interested Agency under SEQR for these projects and had asked that a coordinated review be conducted. The City also had asked to be notified of any determination of significance, including a Negative Declaration for an Unlisted Action. To date, Harrison has failed to treat the City as an Interested Agency under SEQRA.

4.1 Redevelopment Project: April 2002 EAF ("Redevelopment Project EAF")

The SEQRA documentation that was filed for the Wetlands Permit Application by request of NYSDEC in its first Notice of Incomplete Application ("First Notice") consists of Harrison's April 11, 2002 SEQR Notice of Intent to serve as Lead Agency for "Project Home Run – Athletic Field Complex." In Harrison's response to the First Notice, the Town Board indicated its intent to assemble 11.023 acres of lands to develop a municipal park consisting of a baseball field, a soccer field, off-street parking and associated site improvements on lands that are the subject of a NYSDEC Brownfields Restoration Project. In addition, the Town prepared a Full Environmental Assessment Form (Full EAF), Part 1 ("Redevelopment Project EAF") which is attached to the Lead Agency Notice.

The Redevelopment Project EAF is dated April 2002 and identifies the action as Project Home Run – Athletic Fields. It describes the Action as follows:

> "The Action calls for the assembly of lands by the Town/Village of Harrison to create an 11.023 acre parcel. Once assembled, the project calls for the development of a municipal park consisting of a baseball field, a soccer field, off-street parking and associated site improvements. The park will be constructed upon lands that are the subject of a NYSDEC Brownfields Restoration Project. The project will also be integrated into a new nature center and trails along the Beaver Swamp Brook. The total project area is 8.68 acres."

The remainder of the EAF contains specific information about the site, acknowledging 4.9 acres of wetland presently, to be reduced to 1.1 acres after completion; a depth to water table of 75'; proposed development of 170 parking spaces; 35 maximum vehicle trips per hour from the project; increased energy use for site lighting; and claiming that the project will not generate traffic significantly above present levels. Most of the information is contradicted by what is contained in project documents.

The EAF includes a Structural Archaeological Assessment Form (SAAF) dated 12/14/06. This form was completed and filed by Harrison in specific response to the DEC First Notice which identified the need for this data and attached a blank form for Harrison's use.

4.2 June 23, 2004 Negative Declaration

In response to DEC's Second Notice of Incomplete Application ("Second Notice"), Harrison submitted a SEQR Determination of Significance approved June 23, 2004, along with a Negative Declaration and Reasons Supporting the Determination of the same date. The Description of the Action in the Negative Declaration differs from that in the Lead Agency Notice and Full EAF Part 1 prepared in 2002. A children's playground has been added to the action and the site size has increased from 8.68 acres to 14 acres. (Significantly, the 100% Design Basis Report cites total site acreage as 16.1). The Negative Declaration was distributed to NYSDEC and the Town of Harrison. No other Involved or Interested parties are listed, including the City of Rye or US Army Corps of Engineers.

The section titled "Reasons Supporting the Determination" ("Negative Declaration Findings") states that there will be no significant change in existing air quality during construction and no long-term impacts from the project. Long-term, permanent noise impacts are not anticipated in spite of the fact that construction of a Little League complex can generate significant noise during baseball season if games are played early weeknights and all day Saturday and Sunday afternoons as in most areas.

In addition, the removal of significant vegetation across the remediation site has eliminated the well-developed buffer that might have mitigated noise and visual impacts to Rye residents. Visual impacts associated with park lighting are not addressed and no Visual Impact Addendum was completed. No long-term impacts to the surface waters of Beaver Swamp Brook are anticipated by the Town as credit is again taken for impervious surfaces removed during the site remediation, rather than comparing the remediated site condition with the proposed developed condition. Reference is made to a complete stormwater management plan and all applicable Phase II requirements but again, by using the pre-remediation condition as baseline, the Town claimed there was no need for a SWPPP and that runoff from the site would decrease.

With regard to Stormwater Impacts, Item 5 of the Negative Declaration Findings states that three conveyance options have been developed each involving channel improvements, and that three storage options have also been developed each involving the creation of additional floodplain storage in the project vicinity. Item 5 also states that final decisions related to selection of one or more mitigation options will be made after further consideration of detailed project issues.

Further, the Negative Declaration Findings state that "Upon implementation of one or more of these mitigation measures, it can be concluded that the project will not result in any significant adverse impact to flooding conditions in and around Beaver Swamp Brook." Essentially, Harrison illegally deferred reviewing the potential significant environmental impacts associated with the proposed flooding mitigation measures and conclusively stated that one of the options would mitigate any adverse environmental impacts without having the benefit of any thorough analysis of same. Moreover, none of the project or SEQRA documents commit to construct the mitigation. To simply turn a blind eye to the obvious impacts to stormwater is a blatant failure to take any "look" at the impacts, let alone a "hard look.

Harrison's own documents make it clear that the impact to stormwater raises at least one potential adverse environmental impact that warrants further study. A Negative finding cannot be made based on unspecified mitigation that has not been incorporated into the project design. If mitigation is required to offset a potentially significant impact, demonstration of design feasibility and adequate funding would be needed to make a finding of no significant impact.

Item 6 of the Negative Declaration Findings claims no significant impact to the State wetland on the site as a result of the development of Project Home Run. This statement is not supported by the project documents and analyses, as described earlier in this report. In addition, the acreages of created and enhanced wetlands that were filed with the USACOE for the Nationwide Permits and with the USFWS have changed since those filings.

The Negative Declaration Findings make no mention of the issues raised in the Geotechnical Report in the 100% DBR.

In short, the Negative Declaration Findings fall short in evaluating the potential for impact in the categories that are presented and in failing to identify other categories of potential impact altogether.

4.3 Remediation Project: July 2003 Full EAF Parts 1 and 2 ("Remediation EAF")

An additional Full EAF Parts 1 and 2 dated July 2003 appears in Appendix E of the 100% DBR. The proposed Action is the Beaver Swamp Brook Environmental Restoration Project and the Action is defined to be the Remediation Project. It is interesting to note that this EAF post-dates the Redevelopment Project EAF even though the Remediation Project was undertaken first. The substance of the EAF Part 1 (Site Description) differs substantially from the Redevelopment Project EAF even though both actions involve the same site.

Part 2 of the Remediation EAF ("Project Impacts and Their Magnitude") is thoroughly inaccurate and does not indicate a single potential project impact of any size or duration in

any category. No Part 3 ("Evaluation of the Importance of Impacts") was prepared because no potential impact was identified in Part 2.

There is no Lead Agency Notice, Determination of Significance, Negative or Positive Declaration, or Reasons Supporting Determination for this SEQRA document.

None of the SEQRA documents prepared by Harrison identifies either the Glen Oaks Drive construction or the Oakland Avenue Improvements as part of their action. This begs the question of what SEQRA review, if any, was performed for these activities.

Harrison's processing of the Beaver Swamp Brook projects under SEQRA raises the question of whether or not they considered the "whole action." Given the partnering of the remediation project with the redevelopment project from the earliest dates, the fact that the PRAP Alternative selected by DEC was the one most favorable to establishing site conditions for the recreational proposal, the addition of project elements to the PRAP that literally laid the groundwork for the redevelopment project (e.g., the Oakland Avenue improvements and Glen Oaks Drive construction), and the references throughout project documents that the remediation was the "initial phase" of the redevelopment, it can be argued that these projects should have been treated as a single course of action under SEQR and evaluated as such. Had this been done, interrelated and phased decisions relating to the projects would have been coordinated and the consequences associated with the whole action made clear. In the same way, the various divisions of DEC involved in the projects should have considered the environmental impacts of the whole action before approving, funding or undertaking any of the specific project elements.

The document record associated with the Beaver Swamp Brook Projects indicates that both the Remediation and Redevelopment projects were re-defined after the Record of Decision was presented to the public and were considered in some instances as a single action. In spite of repeatedly raising concerns about the potential for significant impacts from the projects and requesting participation as an Interested Agency under SEQRA, the City was denied the opportunity for input at key junctures. Serious deficiencies in the manner in which impacts were assessed, improper trading of impacts, presumptive mitigation, and the addition of unevaluated major project elements along the way have conspired to create both wetland and stormwater impacts in the site vicinity.

The SEQRA record associated with the projects is both incomplete and inaccurate and fails to consider the "whole action."

On these bases, the current application for a Freshwater Wetland Permit for the Redevelopment Project must be denied.